

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Michael D. Lackey, :

Plaintiff : Civil Action C-2-06-565

v. : Judge Smith

Maureen Callahan, et al : Magistrate Judge Abel

Defendant :

**Order**

Plaintiff Michael D. Lackey brought this civil rights action under 42 U.S.C. §1983. This matter is before the Court on Lackey's objections to Magistrate Judge Abel's August 7, 2006 Initial Screening Report and Recommendation under 28 U.S.C. §1915(e)(2) that the complaint be dismissed because it (1) does not state a claim upon which relief may be granted; (2) does not allege subject matter jurisdiction as required by Rule 8(a), Fed. R. Civ. P.; and (3) fails to state a claim under §1983 because there is no allegation that defendants alleged actionable conduct was taken under color of State law.

Plaintiff's August 21, 2006 objection merely states that the Report and Recommendation should be rejected "because evidence will substantiate my claims." The complaint alleges that defendants committed an illegal entry, destroyed property, and subjected a disabled person to emotional distress. However, it does not allege a basis for federal subject matter jurisdiction. Federal court are courts of limited jurisdiction. They may not assert jurisdiction over a case unless the complaint pleads a basis for subject matter jurisdiction under a federal statute or the Constitution of the United States. See, Rule 8(a), Fed. R. Civ. P.

As the Magistrate Judge pointed out, there is no subject matter jurisdiction under 28 U.S.C.

§ 1343, because the complaint does not allege that defendants acted under color of law when they allegedly harmed the plaintiff. Defendants are not state actors. Given that all parties reside in Ohio, there is no diversity of citizenship jurisdiction under 28 U.S.C. § 1332. Further, as the Magistrate Judge found, there is no other possible basis for federal subject matter jurisdiction apparent on the face of the complaint.

Accordingly, plaintiff's August 21, 2006 objections to the Magistrate Judge's August 7, 2006 Report and Recommendation are **OVERRULED**. The Clerk of Court is **DIRECTED** to enter **JUDGMENT** dismissing the complaint because it fails to state a claim, fails to plead subject matter jurisdiction, and fails to allege a claim against defendants under § 1983.

/s/ George C. Smith

George C. Smith

United States District Judge